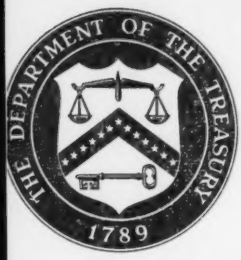
Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters



and Decisions

of the United States Court of Customs and Patent Appeals and the United States Customs Court

Vol. 7 MARCH 21, 1973 No. 12

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Tariff Commission Notices

DEPARTMENT OF THE TREASURY
Bureau of Customs

NOTICE

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Bureau of Customs

(T. D. 73–67)

Foreign currencies—Certification of rates

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., February 28, 1973.

The appended table shows the rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), which are applicable to the currencies of the countries listed in section 16.4(d), Customs Regulations (19 CFR 16.4(d)), for the period from February 20 through February 23, 1973. This table is published for the information and use of Customs officers and others concerned to show the amount of variation in these exchange rates following the devaluation of the United States dollar which took effect on February 13, 1973.

(342.211)

R. N. MARRA,
Director,
Appraisement and Collections Division.

[Published in the Federal Register March 9, 1973 (38 F.R. 6413)]

Country	Currency	Feb. 20	Feb. 21	Feb. 22	Feb. 23
Australia	Dollar	$1.4170	$1.4100	$1.4100	$1.4100
Austria	Schilling	.0470	.0469	.0469	.0483
Belgium	Franc	.024500	.024506	.024735	.025100
Canada	Dollar	(*)	(*)	(*)	(*)
Ceylon	Rupee	.1580	.1579	.1579	.1580
Denmark	Krone	.1573	.15795	.1580	.1605
Finland	Markka	.2525	.2520	.2525	.2520
France	Franc	.2142	.2145	.2174	.2205
Germany	Deutsche Mark	.33705	.3375	.3425	.3472
India	Rupee	.1320	.1320	.1320	.1320
Ireland	Pound	(*)	(*)	(*)	2.4740
Italy	Lira	(*)	(*)	(*)	(*)
Japan	Yen	.003760	.003775	.003767	.0037
Malaysia	Dollar	.3900	.3900	.3900	.390075
Mexico	Peso	(*)	(*)	(*)	(*)
Netherlands	Guilder	.3368	.3375	.3423	.3485
New Zealand	Dollar	1.3205	1.3205	1.3207	1.3200
Norway	Krone	.1648	.1651	.165450	.1665
Portugal	Escudo	.0392	.0394	.0393	.0397
Republic of S. Africa	Rand	1.4000	1.4000	1.4000	1.4000
Spain	Peseta	.016900	.016903	.016900	.017226
Sweden	Krona	.2217	.2220	.221950	.2243
Switzerland	Franc	.2973	.2992	.3075	.3055
United Kingdom	Pound	(*)	(*)	(*)	2.4740

*Use quarterly rate published in T.D. 73–16; daily rate did not vary by 5 per centum or more.

(T.D. 73-68)

Manmade fiber textiles—Restriction on entry

Restriction on entry of manmade fiber textile products manufactured or produced in the Republic of Korea

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., March 1, 1973.

There is published below the directive of February 7, 1973, received by the Commissioner of Customs from the Chairman, Committee for the Implementation of Textile Agreements, concerning the restriction on entry into the United States of manmade fiber textile products in certain categories manufactured or produced in the Republic of Korea. This directive amends but does not cancel that Committee's directive of September 28, 1972 (T.D. 72-304).

This directive was published in the Federal Register on February 9, 1973 (38 F.R. 4015), by the Committee.

(343.3)

R. N. MARRA,
Director,
Appraisement and Collections Division.

THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

February 7, 1973.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20226

DEAR MR. COMMISSIONER:

This directive amends but does not cancel the directive issued to you on September 28, 1972 from the Chairman, Committee for the Implementation of Textile Agreements regarding imports into the United States of man-made fiber textile products in certain specified categories, produced or manufactured in the Republic of Korea.

Under the provisions of the bilateral Wool and Man-Made Fiber Textile Agreement of January 4, 1972, between the Governments of the United States and the Republic of Korea and in accordance with the procedures of Executive Order 11651 of March 3, 1972, you are directed to amend, effective as soon as possible, the levels of restraint establishd in the directive of September 28, 1972 for man-made fiber textile products in Categories 210, 224 and Part of 222 (only T.S. U.S.A. Nos. 380.0428 and 380.8165) and 240, produced or manufactured in the Republic of Korea, as follows:

Category	*Amended Twelve-Month Level of Restraint*
210	0
224 and part of 222 (Only T.S.U.S.A. Nos. 380.0428 and 380.8165)	362,573 pounds [1]
240	0

Entries of man-made fiber textile products in the above categories produced or manufactured in the Republic of Korea and which have been exported to the United States prior to October 1, 1972 shall not be subject to this directive.

The actions taken with respect to the Government of the Republic of Korea and with respect to imports of man-made fiber textile products from the Republic of Korea have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

STANLEY NEHMER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary and Director, Bureau of Resources and Trade Assistance

[1] This level has been adjusted to reflect entries in this category through January 26, 1973.

(T.D. 73-69)

Cotton, wool, and manmade fiber categories

Tariff Schedules of the United States Annotated Numbers correlated with the Textile and Apparel Categories for cotton, wool, and manmade fibers

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., March 7, 1973.

Treasury Decision 72-175 dated June 23, 1972, published a list of the Tariff Schedules of the United States Annotated item numbers, correlated with the textile and apparel categories for cotton, wool, and manmade fibers, used by the United States in administering the textile trade agreement programs. The following amends but does not cancel that list:

Textile Category	*TSUSA No.*
26	Delete "346.3520" and insert in lieu thereof "346.3525" and "346.3530"
27	Delete "346.3540" and insert in lieu thereof "346.3545" and "346.3550"
212	Delete "346.6040" and insert in lieu thereof "346.6045" and "346.6050"

This amendment was published in the Federal Register on February 14, 1973 (38 F.R. 4436), by the Committee for the Implementation of Textile Agreements.

(343.3)

R. N. MARRA,
Director, Appraisement and Collections Division.

(T.D. 73-70)

Foreign currencies—Daily rates for countries not on quarterly list

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, Philippine peso, Singapore dollar, Thailand baht (tical)

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., March 5, 1973.

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buy-

ing rates in U.S. dollars for the dates and foreign currencies shown below. These rates of exchange are published for the information and use of Customs officers and others concerned pursuant to section 16.4, Customs Regulations (19 CFR 16.4).

	Official	*Free*
Hong Kong dollar:		
January 29, 1973	$0.1750	$0.176056*
January 30, 1973	.1750	.175978*
January 31, 1973	.1750	.175978*
February 1, 1973	.1750	.175901*
February 2, 1973	.1750	.175901*
Iran rial:		
February 19, 1973	Holiday	
For the period February 20 through February 23, 1973, rate of $0.0130.		
Philippine peso:		
February 19, 1973	Holiday	
For the period February 20 through February 23, 1973, rate of $0.1460.		
Singapore dollar:		
February 19, 1973	Holiday	
For the period February 20 through February 23, 1973, rate of $0.3900.		
Thailand baht (tical):		
February 19, 1973	Holiday	
For the period February 20 through February 23, 1973, rate of $0.0479.		

(342.211)

R. N. MARRA,
Director,
Appraisement and Collections Division.

*Certified as nominal.

Decisions of the United States Court of Customs and Patent Appeals

(C.A.D. 1089)

THE UNITED STATES v. F & D TRADING CORP. No. 5407 (— F. 2d —)

1. COST OF PRODUCTION—VOLKSWAGENS AND PARTS

Government appeals from decision and judgment of Customs Court holding proper basis of appraisement of "Americanized" Volkswagen automobiles sold outside of the usual channels of trade emanating from the manufacturer, Volkswagen Werke of West Germany, to be statutory cost of production on finding evidence to show that there were no statutory foreign, export or United States values and to prove the claimed statutory cost of production values. We affirm.

2. REAPPRAISEMENT—JURISDICTION—SUBSTANTIAL EVIDENCE

By statute, the jurisdiction of this court in reappraisement cases is limited to a review of the judgment below on matters of law, which include the question whether that judgment is supported by substantial evidence in the record.

3. EXPORT VALUE—ORDINARY COURSE OF TRADE—FREELY OFFERED

The export value found by the appraiser was not, in terms of section 402a(d), "a market value or * * * price" which merchandise such as or similar to the *Americanized Volkswagens imported here* were "freely offered for sale," to all purchasers in the principal markets of West Germany "in the ordinary course of trade."

4. STATUTORY COST OF PRODUCTION

The Customs Court noted that Volkswagens imported through the usual channels were appraised on the basis of statutory cost of production and concluded that since the imported Americanized Volkswagens were such or similar merchandise, the importer had established prima facie a cost of production value for the Americanized Volkswagens. We agree.

5. ID.—EVIDENCE

The Customs Court did not err in admitting into evidence, for the purpose of proving statutory cost of production values for the imported Americanized Volkswagens, a schedule used by Customs for assessing statutory cost of production for Volkswagens imported through the usual channels.

6. ID.—INTENT

To reject the values used by Customs in determining statutory cost of production for Volkswagens imported through the usual channels as not probative of the statutory cost of production value of Americanized Volkswagens because a breakdown is not provided would be unreasonable under the circumstances and merely thwart the obvious intent of the statute to appraise at the true value.

United States Court of Customs and Patent Appeals, March 1, 1973

Appeal from United States Customs Court, A.R.D. 268

[Affirmed.]

Harlington Wood, Jr., Assistant Attorney General, *Andrew P. Vance*, Chief, Customs Section, *Bernard J. Babb* for the United States.

Rode & Qualey, attorneys of record, for appellee. *Ellsworth F. Qualey*, of counsel.

[Oral argument October 5, 1972 by Mr. Babb and Mr. Qualey]

Before MARKEY, *Chief Judge*, RICH, ALMOND, BALDWIN, and LANE, *Associate Judges*.

LANE, *Judge*.

This appeal is from the decision and judgment of the Customs Court, Third Division, Appellate Term, 64 Cust. Ct. 810, A.R.D. 268 (1970), wherein a majority of the Appellate Term reversed the decision and judgment of a single judge sitting in reappraisement, 59 Cust. Ct. 666, 273 F. Supp. 431, R.D. 11360 (1967). We affirm the judgment of the Appellate Term.

The merchandise in issue consists of eight Volkswagen automobiles which were exported from West Germany in 1963. Automobiles, being on the Final List of the Secretary of the Treasury, T.D. 54521, are subject to appraisement under section 402(a) of the Tariff Act of 1930, as amended by the Customs Simplification Act of 1956, 91 Treas. Dec. 295, T.D. 54165. The present automobiles were appraised on the basis of export value (section 402a(d)) while the importer-appellee

claims the proper basis is cost of production (402a(f)). By the provisions of section 402a(a), the value of merchandise is determined on the basis of cost of production only if export value, foreign value and United States value cannot be satisfactorily ascertained.

Paragraphs of section 402a which are particularly involved here read:

> (d) EXPORT VALUE—The export value of imported merchandise shall be the market value or the price, at the time of exportation of such merchandise to the United States, at which such or similar merchandise is freely offered for sale to all purchasers in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade, for exportation to the United States, plus, when not included in such price, the cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States.
>
> (e) UNITED STATES VALUE—The United States value of imported merchandise shall be the price at which such or similar imported merchandise is freely offered for sale for domestic consumption, packed ready for delivery, in the principal market of the United States to all purchasers, at the time of exportation of the imported merchandise, in the usual wholesale quantities and in the ordinary course of trade, with allowance made for duty, cost of transportation and insurance, and other necessary expenses from the place of shipment to the place of delivery, a commission not exceeding 6 per centum, if any has been paid or contracted to be paid on goods secured otherwise than by purchase, or profits not to exceed 8 per centum and a reasonable allowance for general expenses, not to exceed 8 per centum on purchased goods.
>
> (f) COST OF PRODUCTION—For the purpose of this title the cost of production of imported merchandise shall be the sum of—
>
> > (1) The cost of materials of, and of fabrication, manipulation, or other process employed in manufacturing or producing such or similar merchandise, at a time preceding the date of exportation of the particular merchandise under consideration which would ordinarily permit the manufacture or production of the particular merchandise under consideration in the usual course of business;
> >
> > (2) The usual general expenses (not less than 10 per centum of such cost) in the case of such or similar merchandise;
> >
> > (3) The cost of all containers and coverings of whatever nature and all other costs, charges, and expenses incident to placing the particular merchandise under consideration in condition, packed ready for shipment to the United States; and

> (4) An addition for profit (not less than 8 per centum of the sum of the amounts found under paragraphs (1) and (2) of this subdivision) equal to the profit which ordinarily is added, in the case of merchandise of the same general character as the particular merchandise under consideration, by manufacturers or producers in the country of manufacture or production who are engaged in the production or manufacture of merchandise of the same class or kind.

The record consists of affidavits of Thure Dommenget and Rudolf Raab, testimony of Erwin Losch, James Westburg and Bertram Saul, and accompanying affidavits. Dommenget and Raab were dealers who sold Volkswagens outside the franchise of the manufacturer, Volkswagen Werke, in West Germany. Losch was a buyer and seller of Volkswagens for appellee and Westburg was another buyer and exporter of Volkswagens outside the manufacturer's franchise. Saul was the customs examiner in charge of appraisement and classification of automobiles and spare parts at the port of New York.

The evidence indicates that the Volkswagens at bar were purchased in West Germany from dealers or "exporters" who acquired them either from dealers franchised by the manufacturer, Volkswagen Werke, or from private individuals. Appellee paid these "exporters" for the automobiles in cash and accepted delivery in the free trade zone of Hamburg. Delivery was made there so that the "exporters" would receive a rebate the West German government made on exported merchandise. Since the automobiles had not been manufactured for exportation to the United States and thus did not meet all American standards, appellee had them "Americanized" at its expense in Hamburg. That process included installing safety glass windshields, leather seats, mileage speedometers, sealed beam headlight housings, white directional lights and bumpers, as needed. These imported Volkswagens lacked the manufacturer's warranty because those franchised dealers who sold them were unwilling to expose their identity and risk the possibility of Volkswagen Werke taking punitive measures against them. About 4,000 Volkswagens in 1962, and about 5,000 in 1963, were purchased and exported to the United States by appellee in this manner. At that time there were about 15 West German "exporters" selling Volkswagens to appellee and other American importers.

Upon importation, these Volkswagens were appraised at statutory export value, that value being determined by adding to the price appellee paid for each vehicle the amount it spent to Americanize it. The witness Saul testified that customs considered the vehicles used rather than new because they had left the regular distribution channels by which Volkswagen Werke distributed vehicles in the United

States. In response to a subpoena *duces tecum*, he produced a so-called cost of production sheet, Exhibit 3, which he had circulated to appraising officers of the Customs Bureau throughout the country for the purpose of showing the value, based on cost of production, § 402a(f) supra, at which to appraise Volkswagens imported through channels of Volkswagen Werke and by tourists from February 1, 1963 to July 31, 1963.

In denying appellee's appeal for reappraisement at cost of production, the trial court held that it had failed to "negative the existence of export value," which "is alone sufficient to preclude it from prevailing in this case." The court further held that appellee had neither "negatived" the existence of statutory United States value nor established a value predicated on statutory cost of production.

[1] A majority of the Appellate Term disagreed on all points. It found the evidence to show that there was no statutory export value or United States value, that the absence of foreign value was "virtually conceded," and that statutory cost of production had been proved. Hence it found statutory cost of production to be the proper basis for appraisement. Except that it does not claim that there is any statutory foreign value, appellant disputes each of those findings of the majority of the Appellate Term.

[2] By statute, the jurisdiction of this court in reappraisement cases is limited to a review of the judgment below on matters of law, which include the question whether that judgment is supported by substantial evidence in the record. *United States* v. *E. R. Squibb & Sons*, 42 CCPA 23, 26, C.A.D. 564 (1954).

Under that standard, the finding of the majority of the Appellate Term as to export value must be sustained. The majority observed that the value of merchandise for reappraisement purposes must be determined in accordance with its condition at the time of exportation. It then stated:

> [T]he difficulty with the appraisements at bar is that they do not purport to determine a market value or price as distinguished from a mathematical calculation. It is settled law that export value may not be determined by such a calculation. *United States* v. *Alatary Mica Co.*, 19 CCPA 30, T.D. 44871 (1931); *United States* v. *S. Shamash & Sons, Inc.*, 32 Cust. Ct. 665, A.R.D. 41 (1954).

We agree that the appraisements here do not comply with the statutory provisions for export value. [3] The value found was not, in terms of section 402a(d), "a market value or * * * price" at which merchandise such as or similar to the *Americanized Volkswagens imported here* were "freely offered for sale," to all purchasers in the principal markets of West Germany "in the ordinary course of trade."

Contrary to the import of appellant's arguments, use of the term "market value" in the statute does not avoid the necessity of basing export value on an amount at which the merchandise is "freely offered for sale." *Muser* v. *Magrove*, 155 U.S. 240 (1894), cited by appellant, is not authority to the contrary. The appraisement upheld there was made under a statute including a provision for appraisers, "by all reasonable ways and means, * * * to ascertain, estimate, and appraise the true and actual market value and wholesale price * * * of imported merchandise * * *,"* The statute did not include an express requirement that the appraised value be based on an amount at which the merchandise was "freely offered for sale."

The Appellate Term considered the evidence to show the only Volkswagens comparable to the Americanized grey market Volkswagens as imported here to be the Volkswagens controlled by the manufacturer for distribution in the American market either through its American distributor or through American tourists. It correctly noted that the evidence was uncontroverted that the regular channels for such distribution were controlled and would not support a finding of export value under the statute. Losch testified that purchasers of grey market Volkswagens for export to the United States other than appellee all operated in substantially the same way as appellee. That the testimony, along with testimony of Westburg and statements of the affiant Raab that tend to confirm it, provides substantial evidence to support the finding that the other Americanized Volkswagens imported, like the eight at bar, were not offered for sale in West Germany in the condition in which they were exported. Hence the Appellate Term did not err in finding that the existence of an export value under the statute had been negated.

On the question of United States value, appellee faces no adverse presumption. The Appellate Term noted that it was the intention of the West German manufacturer to retain absolute control in the United States, as well as in the home market, of the distribution of its output down to the consumer. It further noted that the Americanized, or grey market, Volkswagens represented a diversion of vehicles manufactured for German consumption and that they lacked the conventional manufacturer's warranty. The Appellate Term stated:

> It seems rather incongruous that the New York appraiser, once he found the styles 113 and 117 of the model 1200 Volkswagens as imported by dealers outside of the franchise not to be *significantly different* from the counterpart models imported within the franchise, as the record shows, would, after appraising the extra-franchise vehicles under a statutory value basis predicated upon market

*155 U.S. at 244.

value or price (i.e., export value), thereafter proceed to appraise the franchise vehicles under the residual value basis (cost of production), unless it was apparent to him at the time of appraising the franchise vehicles that transactions involving the extra-franchise vehicles were not in the ordinary course of trade. For if he thought otherwise he would have been obliged to appraise all of such vehicles, whether within or without the franchise, under the export value basis, in view of the statutory priorities. The fact that he did not do so here is indicative that transactions outside of the franchise with respect to these Volkswagens were not considered to be in the ordinary course of trade. And in either case the manufacturer's practice has been shown here to be one of strict controls.

It, therefore, follows from the foregoing that we find ourselves in disagreement with [the Government] that a United States value for the involved merchandise exists by default in proof, as the result of our views on the matter of the *ordinary course of trade*. For the reason stated we are of the opinion that the evidence negatives the existence of a United States value for the involved merchandise, and that the proper basis for appraising said merchandise is cost of production.

[4] As to cost of production, the Appellate Term held, contrary to the trial court, that Exhibit 3, the schedule of cost of production values used for Volkswagens imported into the United States through the manufacturer's channels, was admissible in evidence. Regarding those Volkswagens as either "such or similar" merchandise under section 402a(f), the Appellate Term found that appellee had established prima facie a cost of production value for the Volkswagens in this case equal to the value set forth in Exhibit 3 for corresponding models.

We agree with the Appellate Term's conclusions as to United States value and cost of production. Those views are predicated on the premise that the Volkswagens imported through the manufacturer's channels are "such or similar merchandise," under both statutory provisions, with respect to the Americanized Volkswagens imported by appellee. That premise finds overwhelming support in the evidence. The evidence is uncontradicted that the grey market and regular channel Volkewagens were nearly identical with the differences, extremely minor, residing in the holes drilled in the fenders, use of amber or red portions in the tail lights and variations in speedometer fittings.

Saul revealed that the reason Customs appraised the present vehicles differently was that they were considered second hand because they had left the usual distribution channels. That position is unsound for several reasons. First, there is uncontroverted evidence that appellee's Volkswagens were not previously used by a consumer and that they were "new" by accepted standards. Second, Saul testified that

Customs also applied the Exhibit 3 values to Volkswagens imported by tourists, which in some cases at least were certainly used abroad prior to importation. In addition, there is no evidence to support a conclusion that Volkswagens substantially the same as those imported directly from the manufacturer became other than "such or similar" merchandise simply by reason of some previous use.

[5] As to accepting Exhibit 3 in evidence, the Appellate Term clearly did not err. The testimony of Saul definitely establishes its authenticity and probative value as setting forth cost of production values that Customs applied to such or similar merchandise during the time period pertinent under the statute. This exhibit, along with the evidence of its use, gives rise to the presumptions that there was no statutory United States value for the imported Volkswagens and that the values set forth therein represented the true cost of production under the statute, that is, the sum of the individual items that section 402a(f) decrees shall make up cost of production. **[6]** To reject those values because a breakdown is not provided, as appellant asks, would be unreasonable under the circumstances and merely thwart the obvious intent of the statute to appraise at the true value.

For the reasons stated, appraisement of the imported Volkswagens at the cost of production values found by the Customs Court, Third Division, Appellate Term is correct, and its judgment is *affirmed*.

(C.A.D. 1090)

OGDEN MARINE, INC., PLATTE TRANSPORT, INC. v. THE UNITED STATES
No. 5508 (— F. 2d —)

1. NOTICE FORM

Customs Court order dismissing summons on ground it was not filed within the one hundred and eighty days after the date of mailing of notice of denial of the protest provided for by 28 USC 2631(a)(1) affirmed.

2. NOTICE OF DENIAL

No particular form for the notice is set forth in the statutes or controlling Regulations, the requirement being simply that "notice of the denial" be given by mail.

3. FORM OF SUFFICIENCY

Information as to the action taken must be clear, definite and explicit and the date of mailing must be set forth; it is not essential that the re-

cipient be warned that the statutory period has begun to run out or that the form be labeled in any particular manner.

United States Court of Customs and Patent Appeals, March 1, 1973

Appeal from United States Customs Court, Civil Action No. 71-12-01917

[Affirmed.]

Burlingham Underwood & Lord, attorneys of record, for appellant, *Hervey C. Allen, John E. Nelson, II*, of counsel.

Harlington Wood, Jr., Assistant Attorney General, *Thomas G. Wilson* for the United States.

[Appellant and appellee submit on brief January 9, 1973]

Before MARKEY, *Chief Judge*, RICH, BALDWIN, LANE, *Associate Judges*, and CLARK, *Justice*, (Ret.), sitting by designation.

MARKEY, *Chief Judge*.

[1] This appeal is from the order of the United States Customs Court of March 7, 1972 dismissing appellants' summons on the ground that it was not filed within the one hundred and eighty days after the date of mailing of notice of denial of the protest, provided for by 28 USC 2631(a)(1).

On May 17, 1971 appellants filed a protest on Customs Form 19 contesting a liquidation made February 26, 1971. The protest was denied June 1, 1971 and notification was given by mailing a carbon copy of the form back to appellants with notations of denial thereon. On December 1, 1971 appellants filed a summons in the United States Customs Court to contest the denial. This being 183 days after the denial,[1] the United States' motion to dismiss was granted.

Appellants now come before us urging, as they did below, that the form of notification employed by the Customs officials did not constitute valid "notice of denial."

The statutory provisions in pertinent part are as follows:

28 USC 2631

> (a) An action over which the court has jurisdiction under section 1582(a) * * * is barred unless commended within one hundred and eighty days after:
>
> (1) the date of mailing of notice of denial, in whole or in part, of a protest pursuant to the provisions of section 515(a) of the Tariff Act of 1930, as amended; * * *

[1] Under 19 C.F.R. 174.30 the date on the notice of denial is deemed the date of mailing. (See Note 2 infra.)

19 USC 1515(a)

> * * * Notice of the denial of any protest shall be mailed in the form and manner prescribed by the Secretary.

[2] As can be seen, no particular form for the notice of denial is set forth in the statutes. Nor do the controlling Regulations [2] specify the form to be used, a fact acknowledged by appellants. The requirement is simply that "notice of the denial" be given by mail. The date of mailing commences the running of the 180 day period of 28 USC 2631(a)(1).

Appellants do not deny that they in fact knew of the denial of the protest. Instead, it is their contention that the returned form with the information as to the action taken confined to an "obscure" area of small print headed by the caption "For Customs Use Only" does not constitute "notice" within the context of 28 USC 2631(a)(1).

It is urged that the imposition of a 180 day limitation upon appellants' right of action by this provision necessitates a clear indication that the form being received is a formal notice. A caption of "Notice" and statements that this is the only notice and that the running of the period has commenced are advanced as minimal requirements.

"Notice" is a word of various meanings, largely controlled by the context in which it is used and the purpose and intent of the statute providing for it. See 66 C.J.S. Notice, §§ 1–8. We agree that the "notice" prescribed in 28 USC 2631(a)(1) must be reasonably interpreted in reference to the limitation placed on an importer's right to contest the denial. See *United States* v. *International Importers*, 55 CCPA 43, 47, C.A.D. 932 (1968).

[3] Information as to the action taken must be clear, definite and explicit. The date of mailing (or under 19 CFR 174.30 the date of denial) must be set forth.

We do not find it essential that the recipient be warned that the statutory period has begun to run. Notice "of denial" is all that the statute requires. Nor do we consider it mandatory that the form be labeled in any particular manner so long as the necessary information is unequivocally conveyed to the proper party.

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[2] 19 CFR 174.29 (in part)—

> * * * If the protest is denied in whole or in part the district director shall give notice of the denial in the form and manner prescribed in § 174.30.

19 CFR 174.30 (in part)—

> (a) *Issuance of notice.* Notice of denial of a protest shall be mailed to any person filing a protest * * *. For purposes of section 515(a), Tariff Act of 1930, as amended (19 U.S.C. 1515(a)), the date appearing on such notice shall be deemed the date on which such notice was mailed.

Turning to the returned protest form, we find that the requisite information is provided. It explicitly states that the protest has been denied. The print size is not out of proportion or illegible. Moreover, the notice is found at the most appropriate place on the form, directly below the recitation of appellants' reasons for protest. The denial is signed by the customs officer, fulfilling the general requirement that written notice be signed by the person authorized to act. The date of denial is noted. Directly below the signature we find a block with the directions "Person Filing Protest—Fill in Name and Address of Person to Whom Notice of Any Denial Should be Sent." Appellants' mailing address has been provided therein.

Clearly the return of this form with information thereon as to the action taken on the protest to the address so provided fulfills the statutory requirement of "notice of denial." The failure of appellants to file their civil action within the statutory period cannot be rectified by the contention that they did not receive valid "notice" under 28 USC 2631(a)(1).

The final order of the Customs Court is *affirmed.*

Decisions of the United States Customs Court

Abstracts
Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *February 26, 1973.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

VERNON D. ACREE,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P73/202	Rao, J. February 21, 1973	R. H. Macy & Co.	70/57764, etc.	Item 382.05 38%	Item 382.72 29%	Agreed statement of facts	New York Women's wearing apparel other than lace or net, not ornamented, of silk, not knit
P73/203	Rao, J. February 21, 1973	D. M. Studner	66/61913, etc.	Item 207.00 16⅔% Item 653.40 19%	Item 793.00 4%	U.S. v. David Studner, et al. (C.A.D. 990)	New York. Discarded waste wood print blocks, etc. (waste and scrap)

P73/204	Ford, J. February 21, 1973	Dejur Amsco Corporation	66/74491, etc.	Item 684.70 15% or 13% (items marked "A") Item 684.70 or 774.60 15% or 17% (items marked "B")	Item 685.40 11.5% or 10% (items marked "A" and "B")	General Electric Company v. U.S. (C.D. 3887 aff'd C.A.D. 1021) (items marked "A" and "B")	New York Earphones which are designed for insertion into the ear and supported by the user's ear alone (items marked "A") Extensions which are solely or chiefly used as parts of earphones described above (items marked "B")
P73/205	Ford, J. February 21, 1973	Hewlett-Packard Co.	67/82100, etc.	Items 682.60 and 807.00 15%	Items 688.40 and 807.00 11.5%	Agreed statement of facts	San Francisco Klystron power supplies
P73/206	Ford, J. February 21, 1973	Sanyei New York Corp.	64/24970	Par. 353 15%	Par. 353 13¾%	Midland International Corporation v. U.S. (C.D. 3217) North American Foreign Trading Corp. v. U.S. (C.D. 3968)	New York Earphones
P73/207	Ford, J. February 21, 1973	R. W. Smith Adding Machine Distributing Co.	68/13778	Item 676.23 12.5% or 11%	Item 676.20 10.5% or 9%	U.S. v. Air-Sea Forwarders et al. (C.A.D. 907)	Houston Calculating machines specially constructed for multiplying and dividing
P73/208	Watson, J. February 21, 1973	Melrose Flower Co., Inc.	67/38189, etc.	Item 748.20 28%	Item 774.60 17%	Armbee Corporation et al. v. U.S. (C.D. 3278) Zunold Trading Corporaing Corporation et al. v. U.S. (C.D. 3279)	New York Artificial flowers, etc.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P73/209	Maletz, J. February 21, 1973	Montgomery Ward & Company	68/69196	Item 737.30 18%	Item 685.22 12.5%	U.S. v. New York Merchandise Co., Inc. (C.A.D. 1004)	San Francisco Poodle dog radios
P73/210	Maletz, J. February 21, 1973	North American Foreign Trading Corp.	67/62568, etc.	Item 737.30 18%	Item 685.22 12.5%	U.S. v. New York Merchandise Co., Inc. (C.A.D. 1004)	New York Stuffed animal radios
P73/211	Maletz, J. February 21, 1973	Strombecker Corporation	68/53590, etc.	Item 737.90 35%	Item 734.20 11.5% or 11%	Agreed statement of facts	Chicago Parts of road race games consisting of cars on track, having mechanical controls for manipulating the action
P73/212	Newman, J. February 21, 1973	Hurricane International	69/32054, etc.	Item 207.00 or 206.97 16⅔%	Item 727.35 10.5%	The American Import Co. et al. v. U.S. (C.D. 3807)	San Francisco Gun racks

P73/213	Newman, J. February 21, 1973	Interman Industrial Products, Ltd., et al.	69/42154(B), etc.	Item 633.00 18% Item 658.00 16%	Item 687.60 12.5 or 11%	Agreed statement of facts	New York Silicon manufactured into unfinished electronic crystal components and parts other than television picture tubes
P73/214	Re, J. February 21, 1973	Arbor Import Corp. et al.	68/58428, etc.	Item 772.06 21¢ per lb. and 17% 18.9¢ per lb. and 15%	Item 772.15 17% and 15%	Davar Products, Inc. v. U.S. (C.D. 3880)	New York Plastic tidbit trays, snack sets, candy dishes, and bowls
P73/215	Re, J. February 21, 1973	Bloomingdales	66/23706	Item 204.50 2¢ per lb. plus 8.5%	Item 204.50 2¢ per lb. plus 5%	Agreed statement of facts	New York Wood boxes, cases, or chests lined with textile fabrics

Decisions of the United States Customs Court

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R73/41	Ford, J. February 21, 1973	C. J. Tower & Sons of Buffalo, Inc.	R69/10839	Constructed value: In Canadian dollars is invoice value (stated in U.S. dollars), plus currency conversion factor stated in appraisement, plus 30.4% for general expenses and profit, including value of U.S. components if any	Not stated	C. J. Tower & Sons of Niagara, Inc. v. U.S. (R.D. 11577)	Buffalo Repair parts for can making machines and for can closing machines
R73/42	Re, J. February 21, 1973	Borneo Sumatra Trading Co., Inc.	R60/16386, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Baltimore Japanese plywood, other than birch plywood
R73/43	Re, J. February 21, 1973	Borneo Sumatra Trading Co., Inc., et al.	R60/16459, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Portland, Oreg. Japanese plywood, other than birch plywood

R73/44	Re, J. February 21, 1973	Borneo Sumatra Trading Co., Inc., et al.	R63/14789, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	New York Japanese plywood
R73/45	Re, J. February 21, 1973	Getz Bros. & Co. et al.	R60/16474, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	San Diego Japanese plywood
R73/46	Re, J. February 21, 1973	Getz Bros. & Co. et al.	R64/9536, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Tampa Japanese plywood
R73/47	Re, J. February 21, 1973	Industries Unlimited	R61/533, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Norfolk Japanese plywood, other than birch plywood
R73/48	Re, J. February 21, 1973	Pan Pacific Overseas Corp.	R60/14423, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Baltimore Japanese plywood, other than birch plywood
R73/49	Re, J. February 21, 1973	Plywood & Door Manufacturers Corporation	R62/3406	Export value: Appraised unit value set forth in invoices, less the invoiced ocean freight and insurance prorated, plus (where deducted in appraisement) the invoiced loading charges, prorated	Not stated	Plywood & Door Northern Corporation v. U.S. (R.D. 10863)	Philadelphia Birch plywood

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R73/50	Re, J. February 21, 1973	Plywood & Door Northern Corporation	R62/6607, etc.	Export value: Appraised unit value set forth in invoices, less the invoiced ocean freight and insurance, prorated, plus (where deducted in appriasement) the invoiced loading charges, prorated.	Not stated	Plywood & Door Northern Corporation v. U.S. (R.D. 10863)	Philadelphia Birch plywood
R73/51	Re, J. February 21, 1973	Plywood & Door Northern Corporation et al.	R62/11361, etc.	Export value: Appraised unit value set forth in invoices, less invoiced ocean freight and insurance, prorated, plus (where deducted in appraisement) invoiced loading charges, prorated.	Not stated	Plywood & Door Northern Corporation v. U.S. (R.D. 10863)	New York Birch plywood
R73/52	Re, J. February 21, 1973	Plywood & Door Northern Corporation	R63/16170	Export value: Appraised unit value set forth in invoices, less invoiced ocean freight and insurance, prorated, plus (where deducted in appraisement) invoiced loading charges, prorated	Not stated	Plywood & Door Northern Corporation v. U.S. (R.D. 10863)	Alexandria, Va. Birch plywood

R73/53	Re, J. February 21, 1973	Plywood & Door Southern Corporation	R62/6136, etc.	Export value: Appraised unit value set forth in invoices, less the invoiced ocean freight and insurance, prorated, plus (where deducted in appraisement) the invoiced loading charges, prorated	Not stated	Plywood & Door Northern Corporation v. U.S. (R.D. 10983)	Port Everglades (Miami) Birch plywood
R73/54	Re, J. February 21, 1973	Plywood & Door Southern Corporation	R64/17615	Export value: Appraised unit value set forth in invoices, less invoiced ocean freight and insurance, prorated, plus (where deducted in appraisement) the invoiced loading charges, prorated	Not stated	Plywood & Door Northern Corporation v. U.S. (R.D. 10863)	Miami Birch plywood
R73/55	Re, J. February 21, 1973	Wood Mosaic Industries, Inc.	R64/4475, etc.	Export value: Net appraised value less 7¼%, net packed	Not stated	U.S. v. Getz Bros. & Co. et al. (C.A.D. 927)	Portland (Oreg.) Japanese plywood
R73/56	Richardson J. February 23, 1973	Manhattan Novelty Corporation	R61/22979	Export value: Invoiced unit prices, plus inland charges	Not stated	Judgment on the pleadings	New York Radios and parts
R73/57	Richardson J. February 23, 1973	Manhattan Novelty Corporation	R63/11333	Export value: Invoiced unit prices, plus inland charges	Not stated	Judgment on the pleadings	New York Radios and parts

Appeal to United States Court of Customs and Patent Appeals

APPEAL 5531.—Control Data Corporation *v.* United States.—MEMORY PLANES (PARTS OF ELECTRONIC COMPUTERS), REAPPRAISEMENT OF—CONSTRUCTED VALUE—AMOUNT FOR PROFIT.

The merchandise in this case, consisting of inner and outer memory planes (component parts of electronic computers) exported from Hong Kong after being assembled from components fabricated in the United States, was appraised on the basis of constructed value as defined in section 402(d), Tariff Act of 1930, as amended by the Customs Simplification Act of 1956, at varying amounts averaging $69.56 (inner planes) and $70.08 (outer planes), respectively. The trial judge held that the proper dutiable value of the involved memory planes was plaintiff-appellant's claimed values of $48.59 (inner planes) and $48.92 (outer planes). The amount of profit under the constructed value formula is the only item of the appraisement disputed by the parties and represents the difference between the claimed values and the appraised values. On review, the Third Division, Appellate Term, unanimously reversed the trial court's judgment insofar as it sustained Control Data Corporation's (appellant's) claimed values of the inner and outer memory planes.

It is claimed that the Customs Court erred, among other things (19 assignments of error are set forth in appellant's Notice of Appeal), in reversing the trial court's judgment insofar as the trial court had sustained appellant's claimed values for the memory planes; in not finding that the proper dutiable values for the imported merchandise were appellant's claimed values; in finding that the proper dutiable values were represented by the appraised values; in not finding that the method used by the appraising officials in appraising the said merchandise was erroneous; in not finding that it is possible to ascertain a "profit" in the terms of section 402(d), *supra*, notwithstanding absence of a market in the country of exportation; in not adopting the assembler's profit figure as the full measure of the profit element called for under the constructed value statutory formula; in not finding that the values determined by the trial court were the "full values" called for by item 807.00, TSUS, and from which the cost or value of qualifying component materials should have been subtracted; in not finding that Congress, in enacting the relevant statutes here, never intended to impose the virtually insurmountable burden of proof imposed upon appellant by the court below; etc. Appeal from A.R.D. 310.

Tariff Commission Notices

Investigations by the United States Tariff Commission

DEPARTMENT OF THE TREASURY, *March 8, 1973.*

The appended notices relating to investigations by the United States Tariff Commission are published for the information of Customs officers and others concerned.

VERNON D. ACREE,
Commissioner of Customs.

[TEA–I–27]

CERTAIN BALL BEARINGS

Notice of hearing rescheduling

The United States Tariff Commission has rescheduled from April 3, 1973, to May 1, 1973, the hearing in connection with the investigation instituted on January 31, 1973 (38 F.R. 3358–59), under section 301(b) of the Trade Expansion Act of 1962 on a petition filed on behalf of the Anti-Friction Bearing Manufacturers Association, Inc. The hearing will be held Tuesday, May 1, 1973, at 10:00 a.m., E.D.T. in the Hearing Room, Tariff Commission Building, 8th and E Streets, N.W., Washington, D.C. Requests for appearances at the hearing should be received by the Secretary of the Tariff Commission, in writing, at his office in Washington, D.C., not later than noon Thursday, April 26, 1973.

By order of the Commission:

KENNETH R. MASON,
Secretary.

Issued February 27, 1973.

[337-L-58]

VARIABLE DISPLACEMENT FLOWER HOLDERS

Notice of complaint received

The United States Tariff Commission hereby gives notice of the receipt on January 22, 1973, of a complaint under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), filed by McDermott & Green, Inc., of Sausalito, California, alleging unfair methods of competition and unfair acts in the importation and sale of certain variable displacement flower holders which are embraced within the claims of U.S. Patent No. 3,698,132 owned by the complainant. Our Own Imports, Inc., an affiliate of Cardinal China Co., Inc., Romanowski and High Streets, Carteret, New Jersey, has been named as the importer of the subject products.

In accordance with the provisions of section 203.3 of its Rules of Practice and Procedure (19 C.F.R. 203.3), the Commission has initiated a preliminary inquiry into the allegations of the complaint for the purpose of determining whether there is good and sufficient reason for a full investigation, and if so whether the Commission should recommend to the President the issuance of a temporary exclusion from entry under section 337(f) of the Tariff Act.

A copy of the complaint is available for public inspection at the Office of the Secretary, United States Tariff Commission, 8th and E Streets, N.W., Washington, D.C., and at the New York office of the Tariff Commission located in room 437 of the customhouse.

Information submitted by interested persons which is pertinent to the aforementioned preliminary inquiry will be considered by the Commission if it is received not later than April 16, 1973. Extensions of time for submitting information will not be granted unless good and sufficient cause is shown thereon. Such information should be sent to the Secretary, United States Tariff Commission, 8th and E Streets, N.W., Washington, D.C. 20436. A signed original and nineteen (19) true copies of each document must be filed.

By order of the Commission:

KENNETH R. MASON,
Secretary.

Issued February 28, 1973.

[AA1921-116]

IMPRESSION FABRIC OF MAN-MADE FIBER FROM JAPAN

Notice of investigation and hearing

Having received advice from the Treasury Department on February 13, 1973, that impression fabric of man-made fiber from Japan is being, or is likely to be, sold at less than fair value, the United States Tariff Commission has instituted investigation No. AA1921-116 under section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

Hearing. A public hearing in connection with the investigation will be held in the Tariff Commission's Hearing Room, Tariff Commission Building, 8th and E Streets, N.W., Washington, D.C. beginning at 10 a.m., E.S.T. on Tuesday, April 3, 1973. All parties will be given an opportunity to be present, to produce evidence, and to be heard at such hearing. Requests to appear at the public hearing should be received by the Secretary of the Tariff Commission, in writing, at its office in Washington, D.C., not later than noon, Thursday, March 29, 1973.

By order of the Commission:

KENNETH R. MASON,
Secretary.

Issued March 1, 1973.

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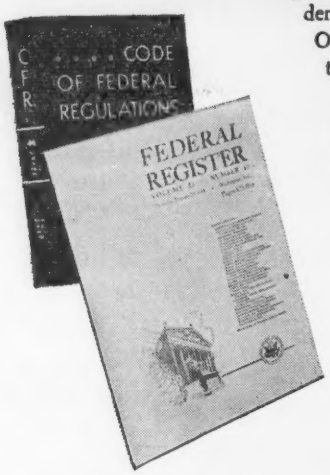

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